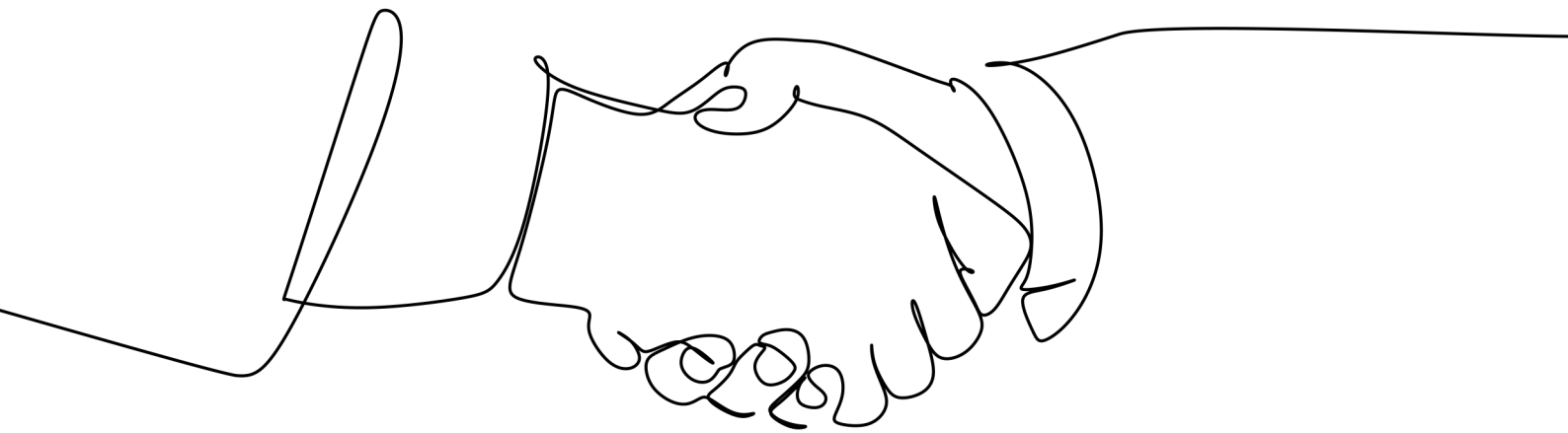


# SUMMARY OF THE LAW ON RELIGION OR BELIEF



This booklet sets out the basic employment rights to which workers are entitled under the religion or belief discrimination provisions of the Equality Act 2010.

Please note that these rights only apply in Scotland, England and Wales.

- PROTECTION AND LIABILITY
- HARASSMENT
- EXCEPTIONS
- REMEDIES
- DISCRIMINATION
- VICTIMISATION
- TRIBUNAL CLAIMS

## WHAT DOES THE ACT COVER?

The Act covers all forms of discrimination in the workplace, including recruitment, terms and conditions, promotions, transfers, dismissals and training or any other detrimental treatment because of the person's religion or philosophical belief.

The Act defines "religion" broadly to cover "any religion." The definition of religion therefore includes (without limitation) Christianity, Buddhism, Islam, Hinduism, Baha'i faith, Jainism, Judaism, Rastafarianism and Sikhism. It is also important to note that workers without a religious belief are also protected against discrimination for their lack of belief.

In terms of philosophical belief, the position is less straightforward. The Employment Appeal Tribunal held in *Grainger v Nicholson* that the belief must be more than a mere opinion; it must be genuinely held and relate to a weighty and substantial aspect of human life and/or behaviour; it must have a certain level of cogency, seriousness, cohesion and importance; and it must be worthy of respect in a democratic society.

The belief must be consistent with human dignity and should not be in conflict with other peoples' fundamental rights. Accordingly, a belief in racial superiority would not be protected. A worker or employee who expressed such views at work would likely be dismissed for gross misconduct.

## WHO IS PROTECTED?

The Act covers both workers and employees. It is, therefore, not necessary to have 2 years continuous service to submit a religion or belief discrimination claim to the Employment Tribunal.

## WHO IS LIABLE?

Individual employees and the employer are liable for acts of discrimination, harassment and victimisation in the workplace.

## WHEN CAN RELIGION OR BELIEF DISCRIMINATION ARISE?

Discrimination because of someone's religion or belief can arise in relation to:

- The arrangements made for deciding who should be offered employment such as shortlisting and interviews
- The terms upon which employment is offered
- Refusing or deliberately omitting to offer employment
- The ways in which access to opportunities for promotion, transfer, training or other benefits, facilities or services are offered
- Dismissal or any other detriment

## **WHAT IS THE PUBLIC SECTOR EQUALITY DUTY?**

Public bodies such as local government, the NHS and those carrying out public functions are under a duty to consider equality when making day to day decisions both in terms of service delivery and employment. This consists of a general duty and specific duties.

The general duty has three aims and requires public bodies to have due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. Advance equality of opportunity between people from different groups. Foster good relations between people from different groups.

The specific duties that apply in Scotland are different to those that apply in England. Specified public authorities are required to monitor, report and publish information on the implementation of the general duty. The said authorities must set equality objectives and are encouraged to engage with employees and trade unions.

## WHAT IS POSITIVE ACTION?

The Act allows employers to select someone with an under-represented protected characteristic during the process of recruitment and promotion.

If the employer "reasonably" thinks the person with a protected characteristic was disadvantaged because of that characteristic (or there are fewer people with the characteristic employed), they can choose that person over someone who does not have the under-represented characteristic provided that:

- The person is "as qualified" as the other candidate.
- The employer does not have a recruitment or promotion policy of treating people of the underrepresented group more favourably.
- The more favourable treatment is a proportionate means of achieving a legitimate aim (the legitimate aim being encouraging participation and overcoming disadvantage).

These provisions are voluntary. An employee or worker cannot bring a claim because the employer did not apply positive action during the recruitment or promotion process, although they may bring a claim if they were discriminated against during it.

## WHAT DOES THE ACT OUTLAW?

### Direct discrimination

Direct discrimination occurs when an employer treats someone less favourably than someone else (or instructs someone to directly discriminate against them), because of their religion or belief.

In order to determine whether someone is directly discriminated against a comparison has to be made with someone of another religion or belief.

The definition is wide enough to cover those who are also discriminated against because they are perceived to be of a particular religion or belief or because they are associated with someone of a particular religion or belief.

Examples of direct discrimination include:

- An employee not being promoted because they are Muslim.
- A worker being subjected to harassment because of their association with another person of a particular religion.
- An employee being prevented from attending training because they are thought to be Buddhist.

## Indirect discrimination

Indirect discrimination arises where an employer applies a provision, criterion or practice which puts those of a particular religion or belief at a particular disadvantage compared to those who do not share the same religion or belief and which the employer cannot justify.

Employers can only justify indirect discrimination if they can show that it was "a proportionate means of achieving a legitimate aim".

Examples of indirect discrimination may be a requirement for a hair stylist to display their hair at work or work a particular shift system.

## HARASSMENT

This occurs when one person subjects someone else to unwanted conduct related to religion or belief that has the purpose and/or effect of violating their dignity or that creates an intimidating, hostile, degrading, humiliating or offensive environment.

The definition of harassment also applies to those subjected to unwanted conduct because of another person's religion or belief. So, for example, an employee who is subjected to offensive comments about their daughter who is a Muslim will be protected under the Equality Act 2010.

Unwanted conduct includes the spoken or written word (including social media), jokes, graffiti or other behaviour.

In determining whether the conduct amounts to harassment, the Tribunal will take into account the perception of the person who experienced the Harassment. Any compensation for Injury to Feelings will be assessed on how the harassment made the individual feel. It is therefore immaterial if the harassment would have impacted someone else in a different way.

## VICTIMISATION

This occurs when an employer subjects a person to a detriment because they have done a protected act.

A protected act includes:

- Bringing proceedings under the Equality Act 2010
- Alleging that the Equality Act 2010 has been breached
- Giving evidence or information in connection with proceedings that someone else has brought.
- Doing anything else such as raising a grievance or giving evidence in someone else's grievance.

The person complaining of victimisation does not need to show they are of a particular religion or belief in order to bring a claim. However, they do have to have acted in good faith when doing a protected act. A false allegation will not amount to a protected act.

## ARE THERE ANY EXCEPTIONS?

There are two basic exceptions to the principle that people should not be discriminated against because of their religion or belief:

- The occupational requirement (OR)
- The religious organisations' occupational requirement

## OCCUPATIONAL REQUIREMENT (OR)

The Equality Act 2010 does not apply when the employer can show that there is an occupational requirement to do with the nature or context of the work which means they need to recruit someone of a certain religion or belief, as long as they can show it is a proportionate means of achieving a legitimate aim.

The occupational requirement applies where employment is for the purpose of organised religion and requires compliance with the doctrines of the religion to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

The occupational requirement applies only to direct discrimination in recruitment, promotion, transfer and training and not to the way in which an employer affords access to benefits, facilities or services. In practice the occupational requirement will only apply in very limited circumstances.

## **RELIGIOUS ORGANISATIONS AND THE OR EXCEPTION**

The Equality Act 2010 also states that employers whose ethos is based on a particular religion or belief can rely on the OR exception provided the employer can show the existence of the ethos and that the OR relates to it.

The requirement to be of a particular religion or belief applies if the employer can show that it is a proportionate means of achieving a legitimate aim and the person concerned does not meet the requirement (or the employer has reasonable grounds for believing that they don't).

## **CAN EMPLOYERS IMPOSE A DRESS CODE?**

In general they can, although they have to be careful that a dress code does not give rise to claims of indirect discrimination. Employers cannot, however, impose a code if it seems to discriminate against someone on the grounds of their religion or belief, unless they can justify the requirement.

If the employer can show that the refusal is a proportionate means of achieving a legitimate aim then as in this case the refusal may be justifiable. However, in general, it is good practice for employers to allow staff to wear clothing that reflects their religious convictions.

## **DO EMPLOYERS HAVE TO OBSERVE RELIGIOUS HOLIDAYS?**

If a worker wants to take a day off in observance of a religious holiday or festival, employers should try to accommodate this when it does not interfere with their business. Otherwise, a refusal may amount to unjustified indirect discrimination.

All organisations (big and small) should have clear procedures for handling leave requests, which should be applied equally to all staff. For their part, staff should give as much notice as possible of a holiday request and be aware that the employer may not always be able to accommodate it.

## **DO EMPLOYERS HAVE TO PROVIDE PRAYER FACILITIES?**

There is no explicit requirement under the Act to provide facilities, such as a prayer room, for workers who want to practise their religion.

However, if employees ask for a quiet place to pray and the premises can accommodate the request without adversely impacting on the business or other staff, then it is hard to see how a refusal could be justified.

## **IS IT EASY TO PROVE A CLAIM?**

Someone complaining of discrimination has to prove, on the balance of probabilities, that their employer discriminated against them because of their religion or belief.

Tribunals are aware that it can be difficult for claimants to provide clear evidence of discrimination so once an employee has established facts from which a Tribunal could conclude that there had been discrimination, then the burden shifts to the employer to show that they did not discriminate against them. This is known as the reversal of the burden of proof.

## **HOW DO CLAIMANTS GATHER INFORMATION FROM THEIR EMPLOYER?**

Workers can no longer use standard forms (the questionnaire procedure) when requesting information from their employer about their complaint. They can still ask their employer to provide them with information, but there is no obligation on the employer to provide it. It is helpful to identify any documents which could be requested through the tribunal at the earliest opportunity.

## WHAT TIME LIMITS APPLY?

Claims must be brought within three months less one day of the act of discrimination that the person is complaining about. In exceptional circumstances the three month time limit may be extended if a Tribunal believes that it is just and equitable to do so.

When the discrimination has occurred over a long period of time, this may amount to a continuing act extending over a period. A claim must then be brought within three months less one day of the last act in the series of acts.

## WHAT REMEDIES ARE AVAILABLE?

There are three remedies available to a Tribunal:

- Declaration.
- Compensation.
- Recommendations.

## **DECLARATION**

A declaration is a statement of the rights at the end of a claim, for instance that a worker has been subject to direct discrimination.

## **COMPENSATION**

Compensation can be awarded for Injury to Feelings and financial losses, if there are any. There is no limit to the amount of compensation which can include loss of earnings (past and future), loss of pension, interest and any other outlays associated with the discrimination.

The amount of compensation for Injury to Feelings can vary enormously. The person's age and vulnerability may be considered, and also the severity of the discrimination.

Claimants can also ask for compensation for personal injury if they have been seriously affected by the discrimination, particularly in harassment cases which can lead to illness and depression. If so, claimants need to produce a medical report to support their claim.

## RECOMMENDATIONS

The Tribunal can make recommendations for the purpose of preventing or reducing the effect of the discrimination on the claimant.

If the employer fails to comply with a recommendation, then the Tribunal may order the compensation to be increased.

**0800 0891 331**

For more information visit:

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The information contained in this booklet is not a substitute for legal advice. You should talk to a lawyer or adviser before making a decision about what to do.